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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-667

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, and its Agent CHARLES TREMPER,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD and ASSOCIATED GENERAL CONTRACTORS OF AMERICA, EVANSVILLE CHAPTER, INC.,

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Seventh Circuit

BRIEF FOR RESPONDENT ASSOCIATED GENERAL CONTRACTORS OF AMERICA, EVANSVILLE CHAPTER, INC. IN OPPOSITION

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INDEX

	PAGE
General Statement	2
Reasons for Not Granting the Writ	2
Conclusion	3

Authorties Cited

Cases

H. K. Porter v. N.L.R.B., 397 U. S. 99 (1970)	3
N.L.R.B. v. Plasterers' Union, 404 U. S. 116 (1972)	3

Statutes

29 U.S.C. Sec. 158 (b) (1) (B)	2
29 U.S.C. Sec. 158(b) (3)	3

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-657

LOCAL UNION NO. 103, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, and its Agent CHARLES TREMPER,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD and ASSOCIATED GENERAL CONTRACTORS OF AMERICA, EVANSVILLE CHAPTER, INC.,

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Seventh Circuit

BRIEF FOR RESPONDENT ASSOCIATED GENERAL CONTRACTORS OF AMERICA, EVANSVILLE CHAPTER, INC. IN OPPOSITION

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GENERAL STATEMENT

Respondent, Associated General Contractors of America, Evansville Chapter, Inc., does not oppose the formal parts of Petitioner's Brief as they outline the opinion below, jurisdiction, questions presented, constitutional provisions and statute involved, and statement of the case. Because of this it would serve no useful purpose to repeat these matters save to note they generally state the matters before this Court with one notable exception. As shown by Petitioner's supplemental appendix, the Board's Trial Examiner and two of its members were in total agreement with the Decision of the Court of Appeals for the Seventh Circuit on the matter of Section 8 (b) (1) (B) violation of the Act in this case and, in fact, the Board is not seeking a writ of certiorari in this case.

REASONS FOR NOT GRANTING THE WRIT

Basic to the incorrect assumptions contained in both points argued by Petitioner is the simple fact that the Board has not chosen to seek a writ in this case and its Trial Examiner and two of its members agreed in total with the Decision of the Court below on the 8 b) (1) (B) violation and all were in agreement on the 8 (b) (3) violation. Thus, the citations used in the first portion of Petitioner's brief with reference to deference to the Board's view of labor policy are not appropriate.

Similarly, were the petition granted and Petitioner's point of view sustained, those provisions in the Act relating to procedures for the settlement of jurisdictional disputes would, in effect, be repealed. In this

respect it should also be noted that Petitioner misses the thrust of the decision of the Court below and of its administrative brethren in that the concern here is a one-sided control of the panel who might or might not select someone to decide a given jurisdictional dispute, not the simple fact of selection. As the record shows beyond doubt, this Respondent would have no voice in the composition of the selecting agency, a right expressly given it by Section 8 (b) (1) (B) of the Act.

Petitioner's second point, the constitutional issue, is similarly without basis in fact or in law. Petitioner's emphasis on *H. K. Porter v. N.L.R.B.*, 397 U.S. 99 (1970) is totally misplaced, since this Court merely decided that subjects not otherwise controlled by the Act or applicable law were subject to full and free collective bargaining. Finally, were Petitioner's position sustained, as observed by the Court below, this Court's teachings in *N.L.R.B. v. Plasterer's Union*, 404 U. S. 116 (1972) as to the importance of jurisdictional disputes in the statutory format established by Congress would be destroyed. This is particularly so if the attempt to gain total control of jurisdictional dispute procedures, the Section 8 (b) (1) (B) violation, were not also found, as both the Court below and the Board without dissent decided, to be an unlawful refusal to bargain under Section (8) (b) (3) of the Act.

CONCLUSION

For the foregoing reasons, Respondent, Associated General Contractors of America, Evansville Chapter, Inc., respectfully asks that the Petition be denied.

Respectfully submitted,

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November 27, 1972